



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

(petitioner)

DECISION

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MRA-9/47931

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 12, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Chippewa County Dept. of Social Services in regard to medical assistance, a hearing was held on March 13, 2001, at Chippewa Falls, Wisconsin.

The issue for determination is whether the community spouse's asset limit may be raised.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Represented by:

Mary Rudd Benefits Specialist  
Chippewa County Dept on Aging  
711 North Bridge Street  
Chippewa Falls, WI 54729

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Cindy Tadayan, ESS  
Chippewa County Dept Of Social Services  
711 N. Bridge Street  
Chippewa Falls, WI 54729-1877

**EXAMINER:**

Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (SSN 389-14-5200, CARES #1109828110) is a resident of Chippewa County.
2. The petitioner applied for medical assistance on November 27, 2000.

3. The petitioner and his wife have a total of \$64,137 in assets. They seek to allocate all of those assets to the wife.
4. The petitioner receives \$2,444.97 in income each month. This includes \$806 from social security, \$785.67 from a state pension, and \$856.30 from a veteran's pension.
5. The petitioner's wife receives \$634 in social security each month.
6. The assets of the petitioner and his wife generate \$322.99 each month.
7. The petitioner's shelter costs are \$861.45.

### DISCUSSION

The federal Medicare Catastrophic Coverage Act of 1988 is designed to protect from destitution a person whose spouse enters a nursing home and receives medical assistance. The law allows couples with assets under \$100,000 to assign \$50,000 to the community spouse. §49.455(6)(b)3, Stats., *MA Handbook*, Appendix 23.4.2. Because an institutionalized person can have up to \$2,000 in assets, couples in this position generally are allowed to have up to \$52,000 in assets and still maintain one of the spouse's eligibility for medical assistance. Nevertheless, if the community spouse's income falls short of her needs, she may request through a fair hearing that the asset limit be increased so that more income can be produced. §49.455(8)(d), Stats. The minimum monthly maintenance needs allowance currently is the lesser of \$2,175 or \$1,875 plus excess shelter costs. *MA Handbook*, Appendix 23.6.0. Excess shelter costs are shelter costs above \$562.50. *Id.*

The parties agree that the petitioner and his wife's assets total \$64,137. The petitioner receives \$2,447.97 in income per month and his wife receives \$634. Their assets generate an additional \$322.99 in income each month. The wife documented \$861.45 in total shelter costs. *Exhibit 1*. This is \$298.95 above the normal shelter costs. When this amount is added to the \$1,875 allowed by the spousal impoverishment regulations, it sets her minimum monthly need at \$2,173.95, or \$1,539.95 greater than her current income. Wisconsin law has required the institutionalized spouse to make his income available to the community spouse before allocating his assets to her. §49.455(8)(d), Stats. However, the Wisconsin Court of Appeals, in *Blumer v. DHFS*, 2000 WI App 150, 237 Wis. 2d 810, \_\_ N.W. 2d \_\_, concluded that this requirement violates the federal Medicare Catastrophic Coverage Act. The *Blumer* court held that the administrative law judge first must allocate resources to maximize the community spouse's income. The institutionalized spouse's income can be allocated only if the income from resources fails to bring the community spouse's income up to the monthly minimum. The state has appealed the *Blumer* decision to the United States Supreme Court, but currently it is the law.

In the case of the petitioner's wife, the \$322.97 generated by all of the couple's assets brings her income to \$966.97, or \$1,216.96 short of her \$2,173.95 minimum monthly need. This \$1,216.96 must be allocated from the petitioner's income. The petitioner is entitled to a \$40 personal needs allowance. §49.455(3), Wis. Stats. The remainder of his income, or currently \$1,191.01, must go toward his medical expenses. Based on these facts I find that the couple's assets may be assigned entirely to the petitioner's wife. Medical assistance allows benefits to begin retroactively up to three months before the date of application if the person is otherwise eligible. §HFS 103.08, Wis. Admin. Code. The Department has routinely backdated eligibility to the first day of the month that a person is eligible. Because the petitioner applied for medical assistance on November 27, 2000, he could be eligible as early as August 1, 2000. It is unclear when he met all of the other requirements for medical assistance eligibility, so I will let the county determine the date. The petitioner's wife should note that all of the assets must be actually and legally transferred into her name alone by the petitioner's next regularly scheduled review date. *MA Handbook*, App. §23.4.3.

### **CONCLUSIONS OF LAW**

All of the non-exempt assets of the petitioner and his wife must be allocated to his wife to maximize her monthly income.

**NOW, THEREFORE, it is** **ORDERED**

That the matter be remanded to the county with instructions to increase the wife's share of the couple's assets to \$64,137, and to allow the petitioner to enroll in medical assistance retroactive to the date (but not before August 1, 2000) that he met all of the program's requirements. The county shall do so within 10 days of this decision. If the petitioner disagrees with the date that the county agency determines that he is eligible for medical assistance he may appeal that finding.

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this \_\_\_\_\_ day  
of \_\_\_\_\_, 2001.

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Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals  
79/MDO

cc: CHIPPEWA COUNTY DEPT OF SOCIAL SERVICES  
DHFS - Susan Wood  
Mary Rudd, Ben Spec, Chippewa Dept on Aging

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